



ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2021-0566; FRL-9868-01-OAR]

Notice of June 2022 Alternative Compliance Demonstration Approach for Certain Small Refineries Under the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of its action to provide an alternative compliance demonstration approach (the “June 2022 Compliance Action”) to certain small refineries whose 2016, 2017, and/or 2018 petitions for small refinery exemptions (SREs) under the Renewable Fuel Standard (RFS) program were denied in April and June 2022 after being judicially remanded to EPA for reconsideration. EPA is providing this notice for public awareness of, and the basis for, the June 2022 Compliance Action announced on June 3, 2022, which supplements the April 2022 Compliance action announced on April 7, 2022.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734-214-4657; email address: nelson.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act (CAA) provides that a small refinery¹ may at any time petition EPA for an extension of the exemption from the obligations of the RFS program for the reason of disproportionate economic hardship (DEH).² In evaluating such petitions, the EPA Administrator, in consultation with the Secretary of Energy, will consider the findings of a

¹ The CAA defines a small refinery as “a refinery for which the average aggregate daily crude oil throughput for a calendar year ... does not exceed 75,000 barrels.” CAA section 211(o)(1)(K).

² CAA section 211(o)(9)(B)(i).

Department of Energy (DOE) study and other economic factors.³ In separate actions announced on April 7, 2022, and June 3, 2022, EPA denied 36 and 69 small refinery exemption (SRE) petitions, respectively, for the 2016-2021 compliance years by finding the petitioning small refineries did not face DEH caused by compliance with the RFS program.⁴ Forty-one of those 105 SRE petitions were for the 2016, 2017, or 2018 compliance years, and 34 of those 41 SRE petitions had previously been granted, and those decisions were reversed on remand. It is the 2016, 2017, and 2018 RFS renewable volume obligations (RVOs or “RFS obligations”) created by the denial of these 34 SRE petitions that are the subject of the June 2022 Compliance Action.⁵

II. Compliance Action

Concurrent with issuing the April 2022 SRE Denial on April 7, 2022, EPA announced⁶ the availability of the April 2022 Compliance Action,⁷ which provided an alternative compliance demonstration approach for the 31 small refineries whose SRE petitions had been previously granted for the 2018 compliance year and were denied upon remand and reconsideration.⁸ With this notice, EPA is announcing the availability of the June 2022 Compliance Action, which supplements the April 2022 Compliance Action to include three additional SRE petitions for the 2016 or 2017 compliance year that had not yet been decided at that time.⁹ EPA is providing 31 specific small refineries with an alternative approach to demonstrating compliance with their 2016, 2017, and/or 2018 RVOs created by the SRE Denials. Each of the 31 specified small refineries had previously been granted an SRE for the 2016, 2017, and/or 2018 compliance year; however, each of their petitions again came before EPA as the result of judicial remands. As

³ CAA section 211(o)(9)(B)(ii).

⁴ “April 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-005, April 2022; “June 2022 Denial of Petitions for RFS Small Refinery Exemptions,” EPA-420-R-22-011, June 2022 (hereinafter the “SRE Denials”).

⁵ “June 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,” EPA-420-R-22-012, June 2022.

⁶ 87 FR 24294 (April 25, 2022).

⁷ “April 2022 Alternative RFS Compliance Demonstration Approach for Certain Small Refineries,” EPA-420-R-22-006, April 2022.

⁸ *Sinclair Wyoming Refining Co. v. EPA*, No. 19-1196 (D.C. Cir.), Dec. 8, 2021 Order, Doc. No. 1925942.

⁹ The June 2022 Compliance Action covers a total of 34 SRE petitions; however, the three additional SRE petitions were all submitted by small refineries that were previously covered in the April 2022 Compliance Action. Thus, the June 2022 Compliance Action still applies to 31 small refineries.

established in the June 2022 Compliance Action, EPA has determined there are extenuating circumstances that warrant an alternative compliance demonstration approach that the specified small refineries may use to meet their 2016, 2017, and/or 2018 RFS obligations without retiring any additional RINs.

III. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable...final actions taken by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii) described in the preceding sentence.

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). In the alternative, to the extent a court finds this final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).¹⁰ This final action provides an alternative approach to demonstrating compliance with the 2016, 2017, and/or 2018 RFS obligations for 31 small refineries across the country and applies to small refineries located within 16 states in 7 of the 10 EPA regions and in 7 different Federal judicial circuits.¹¹ This

¹⁰ In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit’s authoritative centralized review versus allowing development of the issue in other contexts and the best use of Agency resources.

¹¹ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

final action is based on the extenuating circumstances applicable to these 31 small refineries and the impacts their compliance with their newly created 2016, 2017, and/or 2018 RFS obligations under the existing compliance scheme would have on the RFS program. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the *Federal Register*.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Joseph Goffman,

Principal Deputy Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2022-12357 Filed: 6/7/2022 8:45 am; Publication Date: 6/8/2022]